

REMARKS/ARGUMENTS

The Examiner has delineated the following inventions as being patentably distinct:

Group I: Claims 1-6 drawn to a process for preparing isocyanates; and

Group II: Claim 7 drawn to a plant.

Applicants provisionally elect, with traverse, the invention of Group I, drawn to a process for preparing isocyanates.

The claims of Groups I and II are integrally linked as a process and a plant for carrying out that process.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions that the claims of the restricted groups are patentably distinct. Restriction between a process and a method for carrying out that process (a plant) is proper when other methods can be used to perform that process. Applicants respectfully traverse the Restriction Requirement on the grounds that the Examiner has not provided sufficient reasons or examples to support patentable distinctness. In the instant case the process claims of Group I and the apparatus of Group II are so related that the same function is performed, i.e., reacting phosgene with amines, granted that Group II performs the same reaction on a larger scale. Method and plant for performing said method are interdependent and should be examined together on the merits, especially wherein the sole disclosed utility of the plant is that recited in the specification. Different classification of subject matter to be divided is not conclusive proof of independent status and divisibility.

The inventions of Groups I and II are considered related inventions under 37 C.F.R. § 1.475(b) and unity of invention between the groups exists.

Applicants respectfully traverse on the grounds that the Office has not shown that a burden exists in searching the entire application.

Further, the M.P.E.P. § 803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

Applicants submit that a search of all the claims would not constitute a serious burden on the Office. In fact, the International Search Authority has searched all of the claims together. As the Office has not shown evidence that restriction should now be required when the International Preliminary Examination Report did not, the Restriction is believed to be improper. 37 C.F.R. § 1.475(b) provides in relevant part that “a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to product, manufacture of said product and use of said product.”

For the reasons recited above, Applicants request that the Restriction Requirement be withdrawn.

Further, Applicants reserve the right to file a divisional application on the non-elected subject matter, if so desired, and be accorded the benefit of the filing date of the parent application.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits and an early notice of such action is earnestly solicited.

Respectfully submitted,

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